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**ENGROSSED SUBSTITUTE SENATE BILL 5267**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Kuderer, Stanford, Conway, Frame, Hasegawa, Hunt, Keiser, Lovelett, Lovick, Nguyen, Nobles, Pedersen, Saldaña, Shewmake, Trudeau, Wellman, and C. Wilson)

AN ACT Relating to safeguarding the public safety by protecting railroad workers; adding a new chapter to Title 49 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that railroad employees are susceptible to illness and infectious diseases from working in confined spaces, as well as the illnesses and injuries that affect the general population, yet have no protections for unpaid leave, and may be subjected to discipline and termination for unpaid absences from duty due to illnesses and injuries of themselves and their family members, or for bereavement.

The legislature further finds that railroad employees may report to work while ill to avoid disciplinary action by railroad companies, pursuant to their corporate attendance and availability policies.

The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health, safety, and welfare of the people of this state.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) The following terms have the same meaning as provided in RCW 50A.05.010: "Child," "family leave," "family member," "health care provider," "medical leave," "period of incapacity," "serious health condition," and "spouse."

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries, or the director's authorized representative.

(4) "Employee" means a person who has been employed by a railroad carrier.

(5) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity, including any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which engages in business as a railroad carrier.

(6) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions except benefits that are provided by a practice or written policy of an employer or through an employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

(7) "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason.

(8) "Operating craft employee" means any employee of a railroad carrier who performs service in an operating craft on a railroad or directs the work of an operating craft employee as a scheduled employee, and includes any other employee of a railroad carrier who performs safety sensitive tasks associated with railroad operations.

(9) "Railroad carrier" means any employer subject to the jurisdiction of the surface transportation board under 49 U.S.C. Sec. 1301 through 1326, as it exists on the effective date of this section. "Railroad carrier" includes the officers and agents of the railroad operations regardless of physical location. "Railroad carrier" does not include class III carriers.

(10) "Unpaid" means a period of leave undertaken without receiving payment of lost wages from an employing railroad company.

NEW SECTION. **Sec.**  The department shall administer the provisions of this chapter.

NEW SECTION. **Sec.**  (1) No railroad carrier may dismiss, suspend, lay off, demote, engage in any adverse action against, or otherwise discipline an employee for unpaid absences pursuant to the provisions of this section if:

(a) The employee has completed three consecutive months of continuous employment by the railroad carrier prior to the absence;

(b) No consecutive period of unpaid absence pursuant to the provisions of this section exceeds 15 days;

(c) The total number of unpaid absences the employee has taken pursuant to the provisions of this section, including railroad employer paid sick leave, is less than 91 days in the current calendar year; and

(d) The unpaid absence is taken pursuant to subsection (2) of this section.

(2) An employee's unpaid absence under this section is due to any of the following reasons:

(a) An absence resulting from an employee's mental or physical illness, injury, or health condition including fatigue; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

(b) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care; and

(c) When the employee or their spouse or registered domestic partner's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a reason.

(3) An employer may permit employees to use any accrued leave, including vacation time or personal leave, while absent pursuant to the provisions of this section. An employer may not require an employee to use paid leave while absent pursuant to the provisions of this section.

(4) For employee absences under this section exceeding five consecutive days, the employer may, within 10 days of the employee's return to work, request verification that the employee's unpaid absence was for a specific purpose pursuant to this section.

(a) If verification is requested by an employer, the employer must provide the employee no fewer than 30 days to obtain and provide any requested verification. An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

(b) If an employer requires an employee to provide verification from a health care provider identifying the need for use of their unpaid leave for a specific purpose pursuant to this section, the employer must not require that the information provided explain the nature of the condition. If the employer obtains any health information about an employee or an employee's family member, the employer must treat such information in a confidential manner consistent with applicable privacy laws.

(5) Any employee absences pursuant to this section are not subject to any type of carrier availability or attendance policy and are separate from any protected leave under Title 50A RCW and section 4 of this act.

NEW SECTION. **Sec.**  (1) It is unlawful for any employer to:

(a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this chapter; or

(b) Discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

(2) It is unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

(a) Filed any complaint or charge, or has instituted or caused to be instituted any proceeding, under or related to this chapter;

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter.

NEW SECTION. **Sec.**  (1)(a) Upon receipt of a complaint by an employee of a railroad carrier, the department shall investigate to determine if there has been noncompliance with this chapter and related rules and issue either a citation and notice of assessment or a closure letter within 90 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(b) The department shall send the citation and notice of assessment or the closure letter to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(c) If the department's investigation finds that the employee's allegation cannot be substantiated, the department shall issue a closure letter to the employee and the employer detailing such finding.

(2)(a) If the department's investigation finds that a railroad carrier violated this chapter or related rules, the department may order the employer to pay the department a civil penalty. Civil penalties may be assessed as follows:

(i) For a class I carrier and any class II or III carrier owned by a class I carrier, up to $5,000 for the first violation, up to $25,000 for the second violation within a three-year period following any previous violation, and up to $100,000 for the third or subsequent violation within a three-year period following any previous violation;

(ii) For a class II carrier, up to $1,000 for the first violation, up to $5,000 for the second violation within a three-year period following any previous violation, and up to $10,000 for the third or subsequent violation within a three-year period following any previous violation.

(b) The department may, at any time, waive or reduce any civil penalty assessed against an employer under this section if the department determines that the employer has taken corrective action to remedy the retaliatory action.

(3) The director may also order other remedies such as back pay and reinstatement, and may increase the fines by rule based on changing economic conditions.

(4) The department shall deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

NEW SECTION. **Sec.**  (1) A person, firm, or corporation aggrieved by a citation and notice of assessment by the department under this chapter, or any rules adopted under this chapter, may appeal the citation and notice of assessment to the director by filing a notice of appeal with the director within 30 days of the department's issuance of the citation and notice of assessment. A citation and notice of assessment not appealed within 30 days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within 30 days after service of the initial order. The director shall conduct an administrative review in accordance with chapter 34.05 RCW.

(4) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of the penalty assessed.

NEW SECTION. **Sec.**  If any person fails to pay an assessment under this chapter, or under any rule under this chapter, after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the director may initiate collection procedures in accordance with section 9 of this act.

NEW SECTION. **Sec.**  (1) After a final order is issued under this chapter, or any rules under this chapter, if an employer defaults in the payment of: (a) Any amount determined by the department to be owed to an employee, including interest; or (b) any civil penalty ordered by the department under this chapter, or any rules under this chapter, the director may file with the clerk of any county within the state a warrant in the amount of the payment plus any filing fees. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of payment due on it plus any filing fees, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to, and interest in, all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which shall be added to the amount of the warrant. A copy of the warrant shall be mailed to the employer within three days of filing with the clerk.

(2)(a) The director may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind when they have reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to an employer upon whom a notice of assessment has been served by the department for payments or civil penalties due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

(b) The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by the director. A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within 20 days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director. The director shall hold the property in trust for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an employer and the property subject to the notice is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(c) As an alternative to the methods of service described in this section, the department may electronically serve a financial institution with a notice and order to withhold and deliver by providing a list of its outstanding warrants, except those for which a payment agreement is in good standing, to the department of revenue. The department of revenue may include the warrants provided by the department in a notice and order to withhold and deliver served under RCW 82.32.235(3). A financial institution that is served with a notice and order to withhold and deliver under this subsection (2)(c) must answer the notice within the time period applicable to service under RCW 82.32.235(3). The department and the department of revenue may adopt rules to implement this subsection (2)(c).

(3) In addition to the procedure for collection of amounts owed, including interest, and civil penalties as set forth in this section, the department may recover amounts owed, including interest, and civil penalties assessed under this chapter, and any rules under this chapter, in a civil action brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

(4) Whenever any employer quits business, sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any person who becomes a successor to the business becomes liable for the full amount of any outstanding citation and notice of assessment or penalty against the employer's business under this chapter if, at the time of the conveyance of the business, the successor has: (a) Actual knowledge of the fact and amount of the outstanding citation and notice of assessment; or (b) a prompt, reasonable, and effective means of accessing and verifying the fact and amount of the outstanding citation and notice of assessment from the department. If the citation and notice of assessment or penalty is not paid in full by the employer within 10 days of the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of the citation and notice of assessment or penalty, and payment thereof by the successor must, to the extent thereof, be deemed a payment upon the purchase price. If the payment is greater in amount than the purchase price, the amount of the difference becomes a debt due to the successor from the employer.

(5) This section does not affect other collection remedies that are otherwise provided by law.

NEW SECTION. **Sec.**  Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the director, setting forth excerpts from, or summaries of, the pertinent provisions of this chapter and information pertaining to the filing of a charge. Any employer that willfully violates this section may be subject to a civil penalty of not more than $1,000 for each separate offense. Any penalties collected by the department under this section shall be deposited into the supplemental pension fund established under RCW 51.44.033.

NEW SECTION. **Sec.**  Nothing in this chapter shall be construed:

(1) To modify or affect any state or local law prohibiting discrimination on the basis of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability; or

(2) To supersede any provision of any local law that provides greater family or medical leave rights than the rights established under this chapter.

NEW SECTION. **Sec.**  Nothing in this chapter diminishes the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this chapter. The rights established for employees under this chapter may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

NEW SECTION. **Sec.**  Nothing in this chapter shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this chapter.

NEW SECTION. **Sec.**  The director may adopt rules as necessary to implement this chapter.

NEW SECTION. **Sec.**  This act may be known and cited as the Shahraim C. Allen safe leave act for Washington railroad workers.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 1 through 15 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. **Sec.**  Except for sections 6 through 10 of this act, which take effect January 1, 2024, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions and takes effect immediately.

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